

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

ROBIN HUGHES as Mother and Next Friend
and QUENTIN JOHNSON as Father and Next
Friend of DJ, a minor,

v.

HENRICO COUNTY PUBLIC SCHOOLS
Serve On: Dr. Amy Cashwell, HCPS Superintendent
3820 Nine Mile Road
Henrico, Virginia 23223

Also Serve On: Henrico County School Board
John W. Montgomery, Jr., Chair
3820 Nine Mile Road
Henrico, Virginia 23223

Case No.:

and

CL19-6045

THOMAS MCAULEY, IN HIS CAPACITY AS
PRINCIPAL OF SHORT PUMP MIDDLE SCHOOL
AND AN EMPLOYEE OF HCPS
Serve On: POCAHONTAS MIDDLE SCHOOL

12000 Three Chopt Road
Henrico, Virginia 23233

and

SCOTT BOWERS, INDIVIDUALLY AND IN HIS
CAPACITY AS AN HCPS EMPLOYEE AND
FOOTBALL COACH
Serve On: SHORT PUMP MIDDLE SCHOOL
4701 Pouncey Tract Road
Glen Allen, Virginia 23059

JOHN DOE, ATHLETIC DIRECTOR,
INDIVIDUALLY AND IN HIS CAPACITY AS
AN HCPS EMPLOYEE AND ATHLETIC DIRECTOR
Serve On: SHORT PUMP MIDDLE SCHOOL
4701 Pouncey Tract Road
Glen Allen, Virginia 23059

Defendants.

RECEIVED & FILED IN OFFICE

[Signature]

Jean A. Mather
County Clerk, Henrico Circuit Court

October 15, 2019

COMPLAINT

COMES NOW, the plaintiffs, Robin Hughes as mother and next friend (hereinafter "Hughes") and Quentin Johnson as father and next friend (hereinafter "Johnson") of DJ, by counsel, and moves the Court for judgment against the defendants, Henrico County Public Schools, (hereinafter "HCPS"), Thomas McAuley (hereinafter "McAuley"), in his capacity as principal of Short Pump Middle School (hereinafter "SPMS"), Scott Bowers, individually, and in his capacity as an employee and Football Coach for Short Pump Middle School (hereinafter "Coach Bowers") John Doe, in his individual capacity and as Athletic Director of Short Pump Middle School (hereinafter "Doe"), jointly and severally, in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00) together with costs and interest from October 13, 2017, all for the reasons stated below:

PARTIES

1. At all times relevant to this Complaint, Plaintiff DJ, a minor, was a resident of Henrico County, Virginia and was a student at SPMS and a member of the SPMS football team. Plaintiff DJ was also a student who was considered special needs and who qualified for and was being educated with an Individualized Education Plan (hereinafter "IEP").

2. At all times relevant to this Complaint, the Defendant HCPS had the duty to ensure a safe, non-discriminatory and inclusive educational and extra-curricular environment for school aged children, including DJ, and to provide those children with employee supervision that facilitated a safe, non-discriminatory and inclusive

environment. Furthermore, the HCPS has overall responsibility for the hiring, training and supervision of its faculty and staff including all individually named defendants.

3. At all times relevant to this Complaint, Thomas McAuley was the principal of SPMS in Henrico County, Virginia. As principal, McAuley's duties included ensuring that all students attending SPMS were afforded a safe, non-discriminatory and inclusive environment that allowed for a free and appropriate public education. McAuley was also responsible for supervising school personnel including the defendants and recommending the hiring and firing of teachers and other school staff who failed to comply with school policies, the U.S. Constitution and the Virginia Constitution with regard to ensuring the safety and well being of the students at SPMS.

4. At all times relevant to this Complaint, Scott Bowers was an employee of HCPS and the football coach for SPMS in Henrico County, Virginia.

5. At all times relevant to this Complaint, John Doe was an employee of HCPS and the athletic director for SPMS, with the duty to oversee the operation of the SPMS football team among other sports at SPMS in Henrico County, Virginia.

FACTS

6. Plaintiff DJ, incorporates herein by reference the allegations contained in paragraphs 1-5.

7. Plaintiff DJ was a 12-year-old seventh grader at SPMS and a member of the SPMS football team at the time the incident giving rise to this Complaint occurred.

8. Approximately one week before the incident giving rise to this Complaint, SPMS officials, including Defendant Bowers, Defendant Doe, Defendant McAuley and other unknown SPMS administrators were made aware of a racial incident involving

bullying and harassment of African American members of the SPMS football team by at least one white football player in the locker room following a game.

9. The harassing and bullying racial slurs of a white football player directed at the African American football players led to a physical altercation in the locker room involving the white player and one of the African American players.

10. The students were on school property and still in the care of school officials, but there was no adult supervision in the locker room at the time this incident occurred.

11. By email dated October 5, 2017, Plaintiff Johnson (DJ's father) advised Defendant Bower about the incident in the locker room involving the racial slurs, bullying, harassment and the subsequent physical altercation.

12. DJ was not involved in the altercation, but advised his father of the incident, as he was one of the three African American players to whom the racial slurs and derogatory language had been directed.

13. Via email response on October 5, 2017, Defendant Bower acknowledged that he had been made aware of the incident the night before.

14. Defendant Bower further advised Johnson that he (Bowers) had taken action and "being this happened on school grounds I have to involve the school."

15. Defendant Bowers advised Johnson that a meeting had been set up with the administration about the matter, and that during the meeting with the administration, it was agreed that the SPMS football players were no longer allowed to be in the locker room without adult supervision.

16. Eight days later, on October 13, 2017, the SPMS football players were once again left unsupervised after school in the boy's locker room for a significant period of time.

17. As a result of the lack of supervision, Plaintiff DJ was the victim of bullying and harassment which resulted in a sexual battery and assault by two other players on the team.

18. While changing his clothes and preparing for football practice, Plaintiff DJ and at least one other African American male on the team were held down against their will by other players and subjected to demeaning simulated sex acts, bullying, harassment, racial slurs, ridiculing, and taunting.

19. In one instance, Plaintiff DJ was grabbed and forced to bend over a bench seat while a bigger, stronger player held him down and simulated performing anal sex on him.

20. In another instance, Plaintiff DJ was forced over a bench while another player simulated performing a sex act on him from behind.

21. Plaintiff DJ did not consent to these unwanted acts and struggled to be released but was overpowered by the other players.

22. After he was released, Plaintiff DJ put his school clothes back on and went to the study hall classroom where he knew there was an adult present, and where he felt he would be safe from the actions of his teammates.

23. Plaintiff DJ did not return to the locker room, nor did he attend football practice that day.

24. The players involved in the sexual battery and assault videotaped the incident and posted it on a social media site, adding subtitles and voiceovers that included

“relentlessly raping the black children”; “fucking the black children,” and asking “do you wonder what happens in the football locker room?”

25. Hundreds of people saw the video on social media, including other students and the principal of a nearby school who contacted the principal at SPMS to alert him about the video.

26. The next school day after the incident, DJ was taunted and teased about being “raped” in the locker room by the students who committed the acts against him, as well as by other SPMS students who had seen the video.

27. For several days after the incident, DJ was subjected daily to students harassing him by pointing, laughing and teasing him about the incident.

28. The school environment became so hostile and uncomfortable for Plaintiff DJ, that his parents requested a waiver for him to attend another school in Henrico County.

29. Although DJ was eventually granted the waiver, his school environment was still uncomfortable, as students at his new school questioned him about the incident that they had also seen on social media.

30. DJ is a student with an IEP and the sexual battery and assault, the hostile and dangerous school environment he was subjected to, as well as his sudden and subsequent school change caused significant issues and disruption to his learning environment. So much so that he was essentially denied a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA).

COUNT I – GROSS NEGLIGENCE

31. Plaintiff DJ incorporates herein by reference the allegations contained in Paragraphs 1-30.

32. At all times relevant to this Complaint, defendants McAuley, Bowers, Doe and other SPMS administrators had a duty to use reasonable care and ensure the safety and well-being of Plaintiff DJ and other students at SPMS.

33. The defendants breached this duty of care when they recklessly allowed the members of the SPMS football team to be left unsupervised in the locker room for a significant enough period of time that Plaintiff DJ was subjected to sexual battery, assault, racial taunts and discrimination by some of his teammates.

34. The defendants failure to ensure appropriate supervision of the SPMS football players, particularly when they had recently been made aware that bullying, harassment and racially discriminatory remarks led to a physical altercation in the locker room between a white player and a black player, was conduct which showed such indifference to others, including Plaintiff DJ, that it constituted an utter disregard of caution amounting to a complete neglect of the safety of another person.

35. The defendants acted with such indifference that their conduct constituted gross negligence.

36. As a direct and proximate result of defendant McAuley, Bower and Doe's gross negligence in failing to properly supervise the SPMS football players in the boys locker room, Plaintiff DJ was the victim of sexual battery, assault, bullying and harassment by at least two other SPMS football players and experienced extreme emotional distress, pain, suffering, inconvenience, and a failure to properly provide Plaintiff DJ a FAPE. Plaintiff DJ has also incurred medical bills as a result of treatment related to this incident.

37. At all times relevant to this Complaint, defendant McAuley, Bowers, and Doe were acting within the course and scope of their employment with HCPS.

38. HCPS is vicariously liable for all actions of its employees, including defendants McAuley, Bowers and Doe, and is responsible under the doctrine of Respondeat Superior.

COUNT II – 42 U.S.C. §1983

39. Plaintiff DJ incorporates herein by reference the allegations contained in Paragraphs 1-38.

40. At all times relevant to this Complaint, the acts and/or inactions of the defendants violated the constitutional rights guaranteed under the Fourteenth Amendment Equal Protection and Due Process Clauses of the U.S. Constitution and the Virginia Constitution of Plaintiff DJ and the other African American football players at SPMS.

41. Defendants McAuley, Bowers and Doe knew or should have known that Plaintiff DJ and the other African American football players at SPMS were being bullied, harassed and subjected to a dangerous, hostile and unsafe environment in the boy's locker room, particularly when unsupervised.

42. Defendants McAuley, Bowers and Doe failed to provide appropriate supervision which led to the resultant sexual battery, assault, bullying and harassment of Plaintiff DJ, thereby causing him harm.

43. The acts and/or inactions of defendants McAuley, Bowers and Doe created and increased the danger for the sexual battery, assault, bullying and harassment of Plaintiff DJ to occur by failing to provide proper supervision when they knew of the dangers of leaving the football players alone in the locker room.

44. Having been notified previously that some of the white football players had made disparaging racial remarks and engaged in bullying and harassment of the African American players in a recent incident where the SPMS football players were left unsupervised in the locker room and a physical altercation ensued, the failure of the defendants to ensure supervision of the football players and protect Plaintiff DJ and the other African American members of the SPMS football team just one week later shocks the conscience.

45. The acts and/or inactions of the defendants in failing to supervise the SPMS football team in the locker room created an environment where Plaintiff DJ was

left vulnerable to bullying and harassment, and created an opportunity for Plaintiff DJ to suffer a sexual battery and assault where an opportunity would not otherwise have existed with proper supervision.

46. Indeed, the high level of egregiousness of the acts against Plaintiff DJ which included, but were not limited to having simulated anal sex performed on him and having the videos of the incident posted all over social media with captions and voice overs proclaiming, “relentlessly raping the black children”; “fucking the black children” and “do you wonder what happens in the football locker room?” could only have occurred as a result of the defendants’ failure to provide adequate supervision.

47. The acts/inactions of the defendants were conducted within the scope of their official duties and employment under color of law.

48. The acts and/or inactions of defendants McAuley, Bowers and Doe caused Plaintiff DJ to be the victim of sexual battery, assault, bullying and harassment by at least two other SPMS football players, resulting in extreme emotional distress, pain, suffering and inconvenience, and a failure to properly provide Plaintiff DJ a FAPE. Plaintiff DJ has also incurred medical bills for treatment related to the harm caused by this incident.

COUNT III – NEGLIGENCE

49. Plaintiff DJ incorporates herein by reference the allegations contained in Paragraphs 1-48.

50. The defendants owed Plaintiff DJ a duty to exercise reasonable care in the supervision of Plaintiff DJ and the other members of the SPMS football team.

51. The defendants failed to exercise reasonable care in their acts and/or inactions as alleged herein, causing harm to Plaintiff DJ.

52. The acts and/or inactions of defendants McAuley, Bowers and Doe caused Plaintiff DJ to be the victim of sexual battery, assault bullying and harassment by at least two other SPMS football players, resulting in extreme emotional distress, pain, suffering, inconvenience and a failure to properly provide Plaintiff DJ a FAPE. Plaintiff DJ has also incurred medical bills for treatment related to the harm caused by this incident.

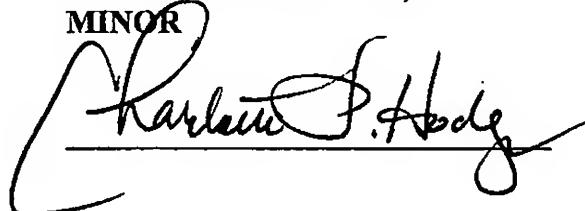
DAMAGES

53. Plaintiff DJ incorporates herein by reference the allegations contained in Paragraphs 1-52.
54. As a direct and proximate result of defendants' McAuley, Bowers and Doe's gross negligence, the defendant's violations of Plaintiff DJ's constitutional rights under the Fourteenth Amendment and Due Process Clauses of the U.S. Constitution and the Virginia Constitution, and the defendant's negligence, and defendant HCPS's vicarious liability and liability under the doctrine of Respondeat Superior, which resulted in the sexual battery, assault, bullying, harassment and denial of FAPE of Plaintiff DJ, he has suffered, extreme emotional distress; pain, suffering and inconvenience, loss of FAPE, and has incurred medical and related expenses.

WHEREFORE, plaintiffs, Robin Hughes as mother and next friend, and Quentin Johnson as father and next friend of DJ, a minor, demand judgment against the defendants, HENRICO COUNTY PUBLIC SCHOOLS, THOMAS MCAULEY, SCOTT BOWERS, AND JOHN DOE, jointly and severally, in the amount of Two Hundred and Fifty Thousand Dollars (\$250,000,00) plus interest from October 13, 2017 and costs.

A TRIAL BY JURY IS DEMANDED.

**ROBIN HUGHES & QUENTIN
JOHNSON, AS PARENTS AND
NEXT FRIENDS OF DJ, A
MINOR**



NOTICE TO DEFENDANTS

Proceedings are pending in the Circuit Court for the County of Henrico, and upon the expiration of ten (10) days after the giving of this notice and the expiration of the statutory period within which you may respond, in the event you do not respond, without further notice, the entry of a judgment by default as prayed for in the above pleading may be requested by the plaintiff.

Charlotte P. Hodges, Esquire
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P.O. Box 4302
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(804) 475-5484 (phone)
(804) 302-7048 (fax)

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

On this 15th day of October 2019, I hereby certify that a true copy of the foregoing document was mailed, postage prepaid, to:

John D. Gilbody, Esquire
Henrico County
Office of the County Attorney
4301 East Parham Road
Henrico, Virginia 23228-2752

